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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/297,591	05/03/99	NAMBU	JA171

HM22/0618
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EXAMINER

CHOI, F

ART UNIT	PAPER NUMBER
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1616

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DATE MAILED: 06/18/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

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Office Action Summary

Application No.

09/297,591

Applicant(s)

NAMBU, TAKANORI

Examiner

Frank I Choi

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 20) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-13 rejected under 35 U.S.C. 103(a) as being unpatentable over Grollier et al. for the reasons of record set forth in the prior Office Actions and the further reasons below.

Grollier et al (U.S. 4,240,450) was discussed in the prior Office Actions and the same is incorporated herein.

Examiner had duly considered Applicant's arguments but deems them unpersuasive.

The test for obviousness is not that the claimed invention must be expressly suggested in the references. Rather, the test is what the combined teachings of the reference would have suggested to those of ordinary skill in the art. See *In re Keller*, 208 USPQ 871 (CCPA 1981).

Applicant argues that there is no motivation to use the claimed amounts. Herein, the reference teaches the use of a combination of amphoteric, cationic and anionic polymers and non-ionic surfactants. As such, it would have been well within the skill of one of ordinary skill of art to arrive at the various amounts through optimization of the prior art values depending on the desired characteristics of the composition, for example, length of hold, flexibility, resistance to humidity and foaming. As such, one of ordinary skill would be motivated to modify the prior art as above with the expectation of modifying said characteristics as desired.

Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kajino et al. (U.S. Pat. 5,254,333) for the reasons of record set forth in the prior Office Action (1/11/01) and the further reasons below.

Kajino et al. was discussed in the prior Office Action (1/11/01) and the same are incorporated herein.

Examiner has duly considered Applicant's arguments but deems them unpersuasive.

The test for obviousness is not that the claimed invention must be expressly suggested in the references. Rather, the test is what the combined teachings of the reference would have suggested to those of ordinary skill in the art. See *In re Keller*, 208 USPQ 871 (CCPA 1981).

Applicant argues that there is no motivation to use the claimed amounts. Herein, the reference teaches the use of a combination of amphoteric, cationic and anionic polymers and non-ionic surfactants. As such, it would have been well within the skill of one of ordinary skill of art to arrive at the various amounts through optimization of the prior art values depending on the desired characteristics of the composition, for example, length of hold, flexibility, resistance to humidity and foaming. As such, one of ordinary skill would be motivated to modify the prior art as above with the expectation of modifying said characteristics as desired. Furthermore, one of ordinary skill in the art would have been motivated to modify the prior art as above with the expectation of formulating a hair treatment composition that imparts of good feeling to hair and is safe to hair and skin (Column 2, lines 1-11).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


A facsimile center has been established in Technology Center 1600. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. The telecopier numbers for accessing the facsimile machines are (703) 308-4556 or (703) 305-3592.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frank Choi whose telephone number is (703) 308-0067.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Mr. José Dees, can be reached on (703) 308-4628.

FIC

June 15, 2001



JOHN PAK
PRIMARY EXAMINER
GROUP 1600

